

Judge Lauren King

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

V.

DONTE JAMAL MCCLELLON,

Defendant.

No. CR22-073-LK

**MEMORANDUM REGARDING MOTION
FOR REVIEW OF MAGISTRATE ORDER**

On March 14, 2023, this Court requested counsel provide supplemental briefing on whether Mr. McClellon's Motion for Review of Magistrate Order filed on February 28, 2023 (Dkt. 104) is moot in light of the magistrate's ruling denying Mr. McClellon subsequent motion for new counsel. (Dkt. 106, 108). Counsel for Donte McClellon, Kristen V. Murray and Emma C. Scanlan, hereby respectfully submit this memorandum in response to the Court's request.

The Federal Public Defender's office was appointed to represent Mr. McClellon on May 19, 2022. (Dkt. 5). On January 31, 2023 the Court heard and granted Defense counsel's Motion to Withdraw and for Appointment of CJA Counsel. (Dkt. 85). Ms. Scanlan was appointed to represent Mr. McClellon on February 2, 2023. (Dkt. 88). Ms. Murray was appointed as second counsel for Mr. McClellon on February 6, 2023. (Dkt. 93).

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1 On February 9, 2023, newly appointed Defense counsel filed a Motion to Continue Trial.
2 The Government did not oppose the motion. Mr. McClellon objected to continuance of his trial
3 date. (Dkt. 96). The parties appeared before the Court to be heard on the continuance motion on
4 February 14, 2023. (Dkt. 98). During the hearing, Mr. McClellon made an oral motion for new
5 counsel. *Id.* The Court referred Mr. McClellon's motion to a magistrate judge and deferred ruling
6 on the Motion to Continue Trial. *Id.*

7 On February 17, 2023, Mr. McClellon's motion for new counsel was heard by Magistrate
8 Judge Michelle L. Peterson. (Dkt. 101). Judge Peterson denied the motion. *Id.* On February 28,
9 2023, Mr. McClellon filed a Motion for Review of the Magistrate's Order denying his request for
10 the appointment of new counsel. (Dkt. 104). While that motion was pending before this Court,
11 Mr. McClellon submitted a second motion for the appointment of new counsel. (Dkt. 106). The
12 Court referred Mr. McClellon's second motion for the appointment of new counsel to Judge
13 Michelle L. Peterson and a hearing was held on March 10, 2023. (Dkt. 108). After a hearing,
14 Judge Peterson denied Mr. McClellon's second motion for the appointment of new counsel. *Id.*
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16 Mr. McClellon has sought the appointment of new counsel on two separate occasions for
17 different reasons. The reasons Mr. McClellon put forth for the appointment of counsel at the
18 hearing held in front of Judge Peterson on February 17, 2023 were different from the basis Mr.
19 McClellon put forth at the hearing held in front of Judge Peterson on March 10, 2023. Although
20 both motions were made by Mr. McClellon and not joined by his counsel, it does appear that Judge
21 Peterson's ruling on the second motion does not moot Mr. McClellon's Motion for Review of the
22 Magistrate's Order denying his request for the appointment of new counsel. (Dkt. 104).
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1 DATED this the 24th day of March, 2023.

2 Respectfully Submitted,

3 /s/ Kristen Murray

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5 /s/ Emma Scanlan

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8 Attorneys for Donte Jamal McClellon

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2023 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all participating counsel for this cause number.

s/Kristen Murray

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